

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Butler, et al.,
Plaintiffs,
v.
New American Funding,
Defendant.

FILED
HARRISBURG, PA

AUG 1 2025

PER  DEPUTY CLERK

Civil Action No. 1:25-cv-00690

**JUDICIAL NOTICE OF ACTIVE DISCIPLINARY COMPLAINT AGAINST PRIOR
COUNSEL JAMES McNALLY AND NOTICE OF DERIVATIVE LIABILITY
PRESERVATION AS TO FOX ROTHSCHILD LLP**

Introduction

Plaintiffs respectfully submit this Judicial Notice to confirm that a formal disciplinary complaint has been opened by the Office of Disciplinary Counsel of the Pennsylvania Supreme Court regarding the conduct of former defense counsel James McNally (PA Attorney ID 78341), who previously appeared in this action on behalf of Defendant New American Funding while affiliated with Fox Rothschild LLP.

On August 1, 2025, the Office of Disciplinary Counsel issued Confirmation No. 20250801001 accepting Plaintiffs' complaint. A true and correct copy of the confirmation is incorporated by reference as Exhibit X.1.

Core Allegations Preserved Under Ongoing Review

- McNally's failure to act or report after receiving documentation of verified third-party harm during his formal appearance;
- His strategic withdrawal following a threatening off-record communication issued by attorney John Q. Howard (then also affiliated with Fox Rothschild LLP), while never addressing the legal or ethical breach that occurred on his watch;
- Failure to seek protective relief, notify the Court, or distance himself from misconduct likely constituting uninsurable exposure under standard E&O (Errors and Omissions) policy language;
- Apparent violations of the Rules of Professional Conduct, including but not limited to Rules 1.1 (Competence), 1.6 (Confidentiality), 3.3 (Candor), 5.1 (Supervisory Responsibility), and 8.4 (Misconduct).

Derivative Exposure – Fox Rothschild LLP

This filing also places the firm Fox Rothschild LLP on judicial notice of its derivative exposure, given that:

- The threat by John Q. Howard (**See Exhibit C1**) occurred while McNally was counsel of record, with no disclaimer or objection lodged;
- Fox Rothschild later formally entered the record through attorney Ronald Williams, without any curative disclosure regarding prior misconduct or internal supervision failures;
- No formal separation or repudiation has been submitted by the firm disavowing the conduct of either McNally or Howard.

These facts raise material concerns for both malpractice risk and supervisory liability, especially under Sections 5.1 and 8.4 of the RPC, which attach firm-level awareness and remedial duties to ongoing misconduct.

Insurance Relevance

The misconduct outlined here likely implicates acts outside standard litigation privilege, placing involved counsel and firm partners outside the protective scope of claims-made malpractice insurance policies. Threat-based escalation, off-record manipulation, and third-party harm during active representation are not typically subject to policy coverage, particularly when not disclosed to the insurer at the time of retention.

Should defense counsel, or the firm, seek to dispute liability while failing to disclose this trajectory to their carrier, such nondisclosure may raise material misrepresentation defenses within their own policy framework. This Court and future proceedings are therefore respectfully placed on notice of live, unresolved E&O implications tied to this judicial record.

Relief and Preservation

This Judicial Notice is submitted for the limited purpose of:

1. Documenting that official disciplinary review is now active and case-linked;
2. Preserving the record as to all attorneys and firms potentially liable for the conduct giving rise to harm and obstruction;
3. Ensuring judicial transparency regarding ongoing professional risk, public safety exposure, and procedural sabotage.

Respectfully submitted,

/s/ Audury Petie Davis

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Referenced Exhibits (Not Reattached):

- Exhibit C1: Threat Letter from John Q. Howard (Fox Rothschild LLP)
- Exhibit C2: Follow-up Threat / Escalation Notice
- Exhibit X.1: Confirmation of ODC Complaint – No. 20250801001

Certificate of Service

I certify that a true and correct copy of this Judicial Notice was filed via PACER and served on all registered counsel of record on August 1, 2025.

/s/ Audury Petie Davis